Filed 8/14/19 In re L.C. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re L.C., a Person Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. N.C., Defendant and Appellant.	E071932 (Super.Ct.No. RIJ1400453) OPINION

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni, Judge. Affirmed.

Joanne D. Willis Newton, under appointment by the Court of Appeal, for Defendant and Appellant.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman and Prabhath Shettigar, Deputy County Counsel for Plaintiff and Respondent.

N.C. (father) appeals the order terminating his parental rights, arguing there is insufficient evidence to support the juvenile court's finding that his son, L.C., is adoptable. Father also challenges the order placing L.C. with his prospective adoptive family. He argues the Riverside County Department of Public Social Services (the department) committed fraud when they referred to his second cousin as a "paternal relative" despite the fact second cousins do not meet the definition of "relative" in the Welfare and Institutions Code provision governing preferential placement consideration. (Welf. & Inst. Code, § 361.3, subd. (c), unlabeled statutory citations refer to this code.) We conclude both father's arguments lack merit, and will affirm the order terminating his parental rights.

I

FACTS

Father and V.V. (mother, who is not a party to this appeal) were in a relationship for over a decade and have four children together—two girls and two boys who were all under 10 years old when this case began. L.C., born in 2011, is the youngest, and this appeal concerns him alone.[1] It took over four years to locate a prospective adoptive family for L.C., and, as of this appeal, the rest of the children are still in foster care. Because the sole issue in this case is whether the juvenile court correctly determined L.C.

[1] The record contains conflicting evidence about whether L.C. is father's biological son. Early on in the dependency, both father and mother said he was. However, about a week later, father claimed "there was a DNA test completed on [L.C.]" and he was not the biological father, though he had been raising L.C. as his son and his name was on the birth certificate. The issue of biological paternity was never resolved, but the court found father to be L.C.'s presumed father.

is likely to be adopted within a reasonable time, we focus on L.C.'s experience during those four years and discuss his siblings only where relevant to the issue of his adoptability.

A. *Jurisdiction and Disposition*

In April 2014, when L.C. was two years old, the department received multiple allegations that the parents were severely neglecting the children. The social worker learned mother had been arrested for child endangerment after she drove recklessly with her children and her oldest child fell out of the car and suffered a head injury. The children told the police that the parents would drink alcohol, physically fight, and have sex in front of them. The second oldest child said she had seen a video of mother orally copulating father on father's cell phone. Two of the children said they had seen father chase after and shoot another man. When the social worker interviewed father, he admitted he and mother used methamphetamine and had a long history with the drug. He admitted he had used methamphetamine several days earlier after getting out of jail for drug possession charges.

On April 23, 2014, the department filed a dependency petition alleging the four children came within the meaning of section 300, subdivision (b) (failure to protect) because the parents neglected them and exposed them to criminal activity, drug use, and domestic violence. The petition also alleged father abused methamphetamine and had multiple prior arrests for drug possession and driving under the influence.

At the jurisdiction and disposition hearing in May 2014, the juvenile court found the children came within section 300, subdivision (b), removed them from both parents, and ordered reunification services. But the reunification period was short-lived. In July 2014, the parents were arrested for being in a stolen vehicle and possessing methamphetamine. By the time of the November 2014 six-month review hearing, father was serving a three-year prison sentence for those charges and facing 10 felony charges for arrests in April, May, and July 2014. The following month, the court terminated both parents' services due to lack of progress on their case plans.

B. *Foster Care (April 2014 to June 2018)*

The department initially placed the boys in one foster home and the girls in another. In May 2014, the department found a home that could take all four children, but after several weeks they had to separate the children. The younger girl was constantly hurting her siblings and L.C.'s older brother, who was then five years old, refused to follow rules and would say things like, "My dad told me I do not have to listen to you because you are not my fucking father." By July 2014, the boys and girls were once again in separate homes.

L.C. had medical and dental exams in the spring of 2014 and the doctors found him to be in good physical health. As of November 2014, the social worker reported L.C. was meeting his developmental milestones and described his behavior and personality positively. "He is verbally expressive, potty trained and can follow simple rules and directives. His sleeping and eating patterns are observed to be normal. [L.C.] is a loving,

affectionate child who gets along well with adults and other children. [He] is learning to make his bed and is able to pick up his toys after playing with them." L.C. received a mental health screening in May 2014 and was found not to need services.

Twice the department assessed the home of a paternal uncle who desired placement, but both times the home was deemed substandard and the uncle failed to submit required information regarding the other adults who lived there.

In March 2015, the foster mother reported L.C. was doing well. He had a habit of wetting the bed, but was starting to break it as a result of the "talking and rewards" system she had been using with him. She also reported that the older brother was exhibiting jealous behavior towards L.C. The social worker described L.C. as a "happy, friendly little boy that is smart and curious."

In September 2015, L.C. underwent another mental health assessment and was again found not to need services. It appears he also underwent a psychological evaluation for depression in November 2015, but the results were pending when the department filed its status report and the record contains no other mention of the evaluation.

In an April 2016 status report, the social worker said L.C. was attending preschool and, according to his teacher, was doing very well, especially in art. He was also still doing well in his foster placement. His foster mother reported he was well adjusted to her and not showing any signs of distress. Her only negative comment was that L.C. would overeat at school parties or events where food was in abundance and he could

"serve [himself] as much as he wants." The social worker also reported that the department had assessed the paternal grandmother and her sister (the paternal great aunt) for placement, but had closed the referral because both failed to submit to fingerprinting. In August 2016, the juvenile court directed the department to assess a paternal great aunt for placement, but she was uncooperative and mother said her home was a place of heavy drug use, so the department ultimately closed the referral.

In an October 2016 status report, the social worker described L.C. at length. "L.C. is an extremely smart, small in stature little boy that is [a] very friendly, affectionate, loving, humorous little guy with big brown eyes and big smile. He is big on appearance and is particular about his clothing and shoes matching. He likes to be neatly groomed and have good hygiene. He is able to communicate his needs, concerns, likes and dislikes. He is very attached to his siblings and likes to make sure that everyone is doing well. He likes to participate in age appropriate activities such as playing outside on his scooter, bike, dig in the dirt or the mud, play with insects and/or bugs, discover his surroundings and chew gum. He likes to color and draw and listen to and read stories. He presents with a calm disposition and is not easily angered. He is able to follow simple directives and complete simple chores such as making his bed and putting his toys away. His sleeping and eating habits are observed to be appropriate for his age."[2] L.C. was in kindergarten by that time, was fond of his teacher, had no behavior issues, and was advanced in multiple subjects. During the first week of school, he got permission to call

[2] Where names appear in quoted documents or transcripts, we substitute pronouns or initials to safeguard confidentiality.

his foster mother because he missed her. In late 2016, he received medical and dental checkups and was found healthy and normal in all areas.

In the spring of 2017, the department reopened and then reclosed its investigation of the paternal grandmother because the others in her home did not submit required information. The department also looked into placing L.C. with a maternal aunt, but were also unable to complete that investigation because she did not want to provide information about her husband or his criminal record.

In an April 2017 status report, the social worker described L.C. as "extremely brilliant," calm, easy going, and very affectionate. He was doing very well in school and had no behavior issues. "He completes all of his class and homework assignments and prides himself on receiving good marks on his completed work. He likes being exposed to and learning new things. He has mastered writing his name, learning colors, shapes, letter and number recognition (able to add), which he appears advanced in." The social worker continued to believe mental health services were unnecessary for L.C. L.C. told the social worker he wanted to live in a "forever home."

The department continued to look for relatives interested in adoption. In July 2017, the department met with a maternal uncle, but he said he could not provide care because he was unemployed and recently paroled.

C. *Placement with Prospective Adoptive Parents*

In July 2017, the department informed the court they had located a "paternal relative" who lived in Colorado and was interested in adopting L.C. and his older brother.

The department requested an Interstate Compact on the Placement of Children (ICPC) and authorization for weekend and overnight visits for the boys with the Colorado relatives (C.T. and B.T., hereafter the Ts). The department also requested a continuance to identify the Ts as a prospective adoptive family and preliminarily assess them.

At a hearing on August 7, 2017, father's attorney submitted on the department's request for a continuance to explore the Ts as a prospective adoptive family for the boys. That same month, L.C. and his brother began to receive individual therapy in response to an incident where the brother inappropriately touched L.C.'s "private area." The boys' therapist believed the brother's behavior was a result of his anxiety about being adopted and frustration over not being able to return to mother. She reported that the brother and one of the sisters had been sexually inappropriate with each other when they were younger. The therapist was working with L.C. on boundaries and verbalizing his feelings. In September 2017, the social worker reported L.C. remained physically healthy and developmentally on track. He was still excelling in school.

At a hearing on October 5, 2017, father's counsel submitted on the department's recommendation of ordering visits with the Ts and assessing them for placement. Father's counsel also signed a stipulation agreeing to overnight visits in Colorado and to requesting an ICPC. The juvenile court ordered the department to assess the Ts for placement and authorized visitation in Colorado.

On October 11, 2017, father called the social worker to say he had been released from prison and request more visitation. He attended the permanency planning hearing

on December 7, 2017. His counsel asked the court to wait on placing the boys with the Ts in Colorado to allow father time to visit them. The juvenile court granted the continuance.

On December 13, 2017, father filed section 388 petitions asking for reunification services for all four children. He said he had completed parenting and anger management programs while in prison and had recently obtained a job and stable housing (living with his mother and aunt).

In January 2018, the department filed an addendum report informing the court that visits with the Ts were going well and the family was "actively seeking services and resources" for the boys. L.C. "expressed multiple times" he wanted to live with the Ts. He had formed a bond with the family and became upset at the end of the most recent visit. The brother liked visiting the Ts, but wanted to live with father.

The department recommended placing both boys with the Ts and denying father's request for reunification services. At a hearing on January 18, 2018, father's counsel and counsel for the children asked the court to continue holding off on placing the boys with the Ts so they could spend more time with father. The court ordered the boys could be placed with the Ts in Colorado as soon as the ICPC was finalized. On January 31, 2018, the ICPC was approved.

In an April 2018 status report, the department informed the court that the boys had another visit with the Ts and both had enjoyed the visit, although the brother maintained his preference of living with father. L.C. had additional medical and dental checkups and

was deemed healthy. He was still eating and sleeping normally and exhibiting calm, easygoing behavior. He was in the first grade and continued to do well in school. There had been another incident of inappropriate touching between the brothers, this time instigated by L.C. L.C. was set to continue individual therapy in Colorado, as well as start trauma-focused cognitive behavioral therapy.

By the time of the hearing on April 12, 2018, the children had been appointed separate counsel, and L.C.'s counsel submitted on the department's recommendation to place L.C. with the Ts. Counsel added that while L.C. had previously told her he wanted to live with the Ts, liked their children, and was sad when visits ended, he had recently changed his mind because they weren't giving him "some of the foods that he would like or the quantities that he would like." Father's counsel argued L.C. should not be placed with the Ts because L.C. had a strong bond with him and the brother. The court ordered the department to complete adoption assessments for the boys.

On May 30, 2018, the department filed an ex parte application for an order to place the boys separately due to concerns for L.C.'s safety. The brother had been telling his therapist and foster mother that he wanted to kill L.C. The foster mother reported the brother was "out of control with his aggressive behavior toward L.C.," had been suspended for hitting a classmate, and had hurt L.C.'s ear and given him a bloody nose. The foster mother reported both boys' behavior was starting to regress. They were defecating in their pants and L.C. was expressing anxiety over not knowing where he was going to live. The Ts had reported that although they could tell L.C. liked living with

them, they also knew his brother and father were trying to influence him not to go to Colorado. The Ts requested immediate placement of L.C. in their home, but they did not feel they should take the brother until he was ready and willing to live with them.

The department believed placing L.C. with the Ts and apart from his brother was both necessary for his safety and in his best interests. "Due to the case being open more than four years, the Department would not like to lose the opportunity for L.C. to have permanency. L.C. and his brother have attended numerous matching events for adoptions and extensive relatives have been explored and no other relatives have been found for placement and custody. In addition, it is believed the brother will want to go to Colorado later when he completes further therapy." L.C.'s counsel agreed with the department's request. On June 13, 2018, the juvenile court issued an order separating L.C. from his brother and placing him with the Ts in Colorado. The court found L.C. did well in the Ts home and was at "extreme risk" if he remained in the foster home with his brother.

Shortly after placement, the Ts reported L.C. was being disobedient and passive aggressive, such as by refusing to go to bed or brush his teeth when he was told. L.C. was seeing a therapist in Colorado and the Ts wanted the therapist to work with him on those issues. The Ts were "committed to adoption and providing L.C. the services he needs." L.C. saw C.T., his paternal second cousin, as his "mother" and wanted to live with the Ts "forever." In July 2018, the brother told the social worker he didn't want any more contact with father and instead wanted to be adopted by the Ts. He said he felt father "would never be able to have him in his care."

In a September 2018 report, the social worker informed the court that she had spoken with L.C. and the Ts on August 30, 2018, and things were going well. L.C. saw the Ts as his "Mom" and "Dad" and wanted them to adopt him, and they were committed to doing so. In November 2018, the department filed a prospective adoptive caregiver assessment of the Ts. The report concluded the Ts were financially able to care for L.C. and had no child welfare history. The Ts wanted to adopt L.C., understood the responsibilities of adoption, and were "actively seeking ways to help him correct his behaviors and overcome the trauma he has endured." Based on the positive assessment, the department recommended terminating both parents' parental rights over L.C. and freeing him for adoption.

The court held a hearing on L.C.'s permanent plan and father's section 388 petitions on November 27, 2018. At the beginning of the hearing, father withdrew the petitions relating to his daughters. The court then granted the petition as to the brother, finding father's circumstances had changed and another six-month reunification period would be in the brother's best interests. The court informed father that it had a "very serious concern" regarding the brother's sexually inappropriate behavior, and ordered that any visits between the brother and the younger daughter take place in a therapeutic setting. The court told father, "sir, there is a lot of work to do with [the brother], probably more than you thought. He's young. He just turned seven years old . . . He's young enough that a lot can be done to help him. So we're going to do our best, but a lot

of it is going to be on you because if you successfully complete services within the next six months, he is going to be with you."

Father submitted stipulated testimony supporting his request for reunification services for L.C. The department and L.C.'s counsel opposed reopening the reunification period, arguing adoption was in the child's best interests. The court agreed and denied the petition. It found that while father's circumstances had changed, L.C.'s interests were best served by the permanency of adoption. "This young child has spent basically almost, it appears, his entire life, very close to it, in a foster care setting at one time or another. He is finally in a . . . stable loving home which he refers to as his forever home." The court found L.C. (who was by then six years old) was likely to be adopted and terminated the parents' parental rights, and father timely appealed.

II

ANALYSIS

A. *Adoptability*

Father argues there is insufficient evidence to support the juvenile court's decision to free L.C. up for adoption. We disagree.

Once a parent fails to reunify with their child and the court terminates reunification services, the parent's interests in the care, custody and companionship of the child "are no longer paramount . . . [and] 'the focus shifts to the needs of the child for permanency and stability.'" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) At a section 366.26 permanency planning hearing, "the court may select one of three alternative

permanency plans for the dependent child—adoption, guardianship or long-term foster care." (*In re Michael G.* (2012) 203 Cal.App.4th 580, 588 (*Michael G.*).) "If the child is adoptable, there is a strong preference for adoption over alternative permanency plans." (*Ibid.*)

A finding of adoptability requires "clear and convincing evidence of the likelihood that adoption will be realized within a reasonable time." (*In re Zeth S.* (2003) 31 Cal.4th 396, 406.) The court's focus is on "whether the child's age, physical condition, and emotional state make it difficult to find a person willing to adopt." (*In re Brian P.* (2002) 99 Cal.App.4th 616, 624.) A child's young age, good physical health, and "ability to develop interpersonal relationships" are all attributes "indicating adoptability." (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1562.) Another "good indicator" of adoptability is the fact someone has already expressed an interest or willingness to adopt the child. (*Michael G., supra*, 203 Cal.App.4th at p. 592.) "It is not necessary that the child already be placed in a preadoptive home, or that a proposed adoptive parent be waiting" for a court to find a child adoptable, but the existence of a prospective adoptive family suggests another family would also be willing to adopt the child. (*In re Brian P.*, at p. 624.) We review an adoptability finding for substantial evidence, giving the finding "the benefit of every reasonable inference and resolve any evidentiary conflicts in [its] favor." (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1232.)

Here, the record contains more than sufficient evidence that L.C. was adoptable. According to the department's reports, L.C. has appealing attributes in spades. He is

young, physically healthy, happy, extremely smart, playful, and easygoing. He is able to form positive bonds with others, like his caretakers and teachers, and has always behaved well in school and received good grades. We also find it telling that those who interacted with L.C. during the dependency spoke highly of him. Unprompted, his counsel told the court both she and his former attorney found him "rather delightful" and "very much enjoy[ed] him." The social worker's fondness for L.C. was also obvious. She consistently described him as charming, well behaved, and bright. Add to these positive attributes the fact a family was already committed to giving him a permanent home, and the record amply supports the juvenile court's adoptability finding.

Overlooking this favorable evidence, father zeroes in on the few instances when L.C. exhibited problematic behavior. He cites to the inappropriate touching between L.C. and his brother, their regressive behavior in late May 2018, and L.C.'s initial defiance of the Ts' rules when he first moved in with them. Father argues these incidents are symptomatic of "serious behavioral and mental health issues" that render L.C. unadoptable. We do not place the same significance on these incidents, nor would we classify them as indicative of *serious* mental or emotional issues. Not only are the incidents father cites outweighed by the positive evidence about L.C.'s personality and intelligence, but also the juvenile court could reasonably conclude that therapy, a stable home, and distance from the older brother would address any unresolved behavioral or mental health issues L.C. might have. There is no indication L.C. engaged in inappropriate touching or would intentionally soil himself when he was away from his

brother. And the initial defiant behavior he exhibited at the Ts home, like not brushing his teeth or going to bed when told, is typical of a young child, and especially understandable if that child is unsure whether they will ever have a "forever family."

Father also argues the department's adoption assessment was inadequate because they failed to provide sufficient information about L.C.'s progress in therapy and, as a result, information about his "mental and emotional status" was lacking.[3] (See section 366.21, subd. (i) [before the court selects adoption as a child's permanent plan, the department must "prepare an assessment that shall include . . . [a]n evaluation of the child's medical, developmental, scholastic, *mental, and emotional status*"], italics added.) Acknowledging that L.C.'s placement with the Ts was working out well, father argues it is too soon to tell how L.C. will "handl[e] the transition . . . once the 'honeymoon' phase wore off."

This type of argument is unavailing in a substantial evidence review. "It is not this court's function to play guessing games about evidence not in the record which may or may not have existed. The rule is well settled that in examining the sufficiency of the evidence to support a questioned finding, the appellate court must accept as true all evidence tending to establish the correctness of the finding as made, taking into account,

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[3] As a side note, father is wrong that such an omission would constitute structural error because it violates a parent's due process right to a fair hearing. It is well settled that inadequacies in adoption assessment reports are subject to a prejudice analysis. (*Michael G.*, *supra*, 203 Cal.App.4th at p. 591, citing *In re Valerie W.* (2008) 162 Cal.App.4th 1, 14-15 ["When a parent challenges an assessment report as inadequate, the reviewing court evaluates any deficiencies in the report in view of the totality of the evidence in the appellate record"].)

as well, all inferences which might reasonably have been thought by the trial court to lead to the same conclusion. [Citation.] There is no corollary to this rule which authorizes a reviewing court to draw inferences from the absence of evidence to overturn the questioned finding." (*Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 813.) When the court found L.C. adoptable, the record contained substantial evidence he was a smart, happy, and healthy child, and that the Ts were committed to adopting him and making sure he continued to receive therapeutic services. In contrast, the record contained no evidence to suggest that L.C.'s behavioral or mental health issues were serious enough to outweigh his positive attributes or render him unadoptable. We will not overturn the court's adoptability determination based on a possibility that L.C. might have or could develop more serious mental health issues than disclosed in the record, especially when father could have, but did not, raise the issue with the trial court.

Father's reliance on *Michael G.* hurts, not helps, his argument. The child in that case, Michael, tested positive for methamphetamine at birth, was consistently defiant, had tried to harm his younger brother, and had only been in a stable foster care home for three months. (*Michael G.*, *supra*, 203 Cal.App.4th at pp. 590-591.) The juvenile court ordered a psychological evaluation but found Michael adoptable before the social services agency submitted the evaluation results. The appellate court concluded that any error in failing to obtain the results before making the adoptability finding was harmless in light of the other evidence of Michael's positive attributes. The court pointed out that "[a]lthough Michael was seven years old and had a history of behavioral problems," the

social worker had described him as "a healthy, happy, attractive child." (*Id.* at pp. 591-592.) "He was affectionate with his caregiver. He did well in school. There were no concerns about his development, which was age-appropriate. His kindergarten teacher said Michael was a bright, endearing child who was eager for attention." (*Ibid.*) Our case is distinguishable because L.C.'s behavioral and emotional issues never prompted the court to order a psychological evaluation. Plus, L.C. has arguably even more positive attributes than Michael had when he was found adoptable. He is consistently described as well behaved, easygoing, and extremely smart, and unlike Michael, has never displayed aggressive or harmful tendencies.

In addition, this is not a case like *In re Valerie W.*, *supra*, 162 Cal.App.4th 1, on which father also relies, where the child was going to be "tested for a serious genetic or neurological disorder" and the court made an adoptability finding before learning the results of that testing. (*Id.* at p. 14.) The record contains no indication L.C. suffered from or was at risk of suffering from a medical condition or mental health disorder serious enough to affect his adoptability. Instead, the record reasonably supports the inference that his emotional issues, which he was in therapy to address, were in no small part caused by his brother's dominating and inappropriate behavior.

By all accounts, L.C. is a healthy, smart, and loveable boy. He has been in foster care for the majority of his young life and deserves the stability and permanency of an adoptive home. We conclude the juvenile court's decision to free him up for adoption is well supported by the record.

B. *Placement*

Father's other argument on appeal is that L.C.'s placement order was "fatally infected by the fact the Department misrepresented [the Ts] as 'relatives' until L.C. was transferred to their home." The department initially referred to L.C.'s prospective adoptive mother C.T. as a "paternal relative," but after they placed L.C. with the Ts in June 2018, they began referring to her as father's second cousin. Father argues that second cousins are not entitled to "preferential [placement] consideration" under section 361.3, which provides that certain relatives requesting placement must "be the first . . . to be considered and investigated." (§ 361.3, subd. (c)(1).)[4] He argues the department fraudulently submitted false evidence to the court. There are major problems with this argument.

First, father lacks standing to challenge L.C.'s placement order. "[O]nly a person aggrieved by a decision may appeal." (*In re K.C.* (2011) 52 Cal.4th 231, 236.) "A parent's appeal from a judgment terminating parental rights confers standing to appeal an order concerning the dependent child's placement only if the placement order's reversal advances the parent's argument against terminating parental rights." (*Id.* at p. 238.) Father argues his challenge to the placement order advances his argument against terminating parental rights because if the court had known the Ts were "not a preferential

[4] Section 361.3 defines "relative" as "an adult who is related to the child by blood, adoption, *or affinity* within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words 'great,' 'great-great,' or 'grand,' or the spouse of any of these persons even if the marriage was terminated by death or dissolution." (§ 361.3, subd. (c)(2), italics added.) Father argues cousins are related by the *sixth* degree of kinship.

placement for L.C.," it might not have "changed its order not to separate the brothers and ordered L.C. placed in Colorado."

The court rejected a similar standing argument in *In re Cody R.* (2018) 30 Cal.App.5th 381. In that case, the mother tried to challenge a placement order after her parental rights had been terminated by "allud[ing] to the possibility that if [her son] had been placed in the care of a relative, the relative would not have been able to adopt and the court would have ordered a permanency plan of guardianship, thus preserving [her] parental rights." (*Id.* at p. 390.) The court concluded mother's argument was insufficient to demonstrate standing because it was based entirely on "[s]peculation about a hypothetical situation." (*Ibid.*) Here, worse than being speculative, father's argument contradicts the record. Given that the court had found it was "extreme[ly]" detrimental to L.C.'s safety to continue living with his brother, there is simply no basis for arguing the court may have kept the boys together if it knew the Ts weren't relatives as defined in section 361.3.

Moreover, section 361.3's relative placement preference is just that, a preference. It tells the department who to *investigate* first for placement, it does not preclude the court from placing a child with a more distant relative or nonrelative, especially where, like here, no closer relatives were seeking placement. (§ 361.3, subd. (c)(1).) In any event, because of his many positive qualities, L.C. was adoptable on his own, without the Ts interest in adopting him. In other words, even if L.C. had not been placed with the Ts,

there was sufficient evidence in the record at the time of the permanency planning hearing for the court to find he was likely to be adopted within a reasonable time.

The second flaw in father's challenge is that even if he had standing to raise it on appeal, he forfeited it by failing to raise it with the juvenile court. Relative placement "is an intensely factual issue . . . [and thus] it is not an issue which may be raised for the first time on appeal. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 54.) Initially, and while he was still in custody, father submitted on the department's recommendation to pursue placement with the Ts. (See *Steve J. v. Superior Court*, *supra*, 35 Cal.App.4th at p. 813 ["a parent who submits on a recommendation waives his or her right to contest the juvenile court's decision if it coincides with the social worker's recommendation].) Once father got out of prison, he objected to the placement, but only on the ground that he wanted a chance to reunify with L.C., not because there was some other relative who should have been given placement preference over the Ts. At no point in the proceedings did father or his attorney argue the Ts were not sufficiently related to him or that there was another interested relative who should have been investigated for placement before them.

Which bring us to a third, related problem with father's challenge. Even now, he can point to no relative who should have received preferential placement investigation over the Ts. The department investigated multiple relatives—a paternal uncle, paternal grandmother, paternal great-aunt, and maternal aunt—before assessing the Ts for

placement, and each investigation was unsuccessful. Father's challenge to the placement order has no merit.

III

DISPOSITION

We affirm the order.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

SLOUGH
J.

We concur:

MILLER
Acting P. J.

RAPHAEL
J.